



CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1229

[Docket No. CPSC-2015-0028]

Safety Standard for Infant Bouncer Seats

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In September 2017, the U.S. Consumer Product Safety Commission (CPSC or Commission) published a consumer product safety standard for infant bouncer seats under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The standard incorporated by reference the ASTM voluntary standard for infant bouncer seats that had been adopted earlier in 2017 and was in effect at the time. ASTM updated the mandatory standard for infant bouncer seats in 2019 and again in 2022. Consistent with the CPSIA's process for updating mandatory standards for durable infant or toddler products that are based on a voluntary standard, when the voluntary standards organization revises the standard, this direct final rule updates the mandatory standard for infant bouncer seats to incorporate by reference ASTM's 2022 version of the voluntary standard.

DATES: The rule is effective on December 19, 2022, unless CPSC receives a significant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If CPSC receives such a comment, it will publish a document in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of December 19, 2022.

ADDRESSES: You can submit comments, identified by Docket No. CPSC-2015-0028, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by electronic mail (e-mail), except as described below.

Mail/hand delivery/courier/confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number, CPSC-2015-0028, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-6820; e-mail: KWalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and to adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). A mandatory standard must be “substantially the same as” the corresponding voluntary standard, or it may be “more stringent than” the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for updating the Commission’s rules when a voluntary standards organization revises a standard that the Commission previously incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B).

2. Safety Standard for Infant Bouncer Seats

Under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for infant bouncer seats, codified in 16 CFR part 1229. The rule incorporated by reference ASTM F2167-17, *Standard Consumer Safety Specification for Infant Bouncer Seats*, with no modifications. 82 FR 43470 (Sep. 18, 2017). At the time the Commission published the final

rule, ASTM F2167-17 was the current version of the voluntary standard. ASTM revised the voluntary standard in May 2019. In September 2019, the Commission revised the mandatory standard to incorporate by reference ASTM F2167-19. 84 FR 46878 (Sep. 6, 2019).

On June 22, 2022, ASTM notified CPSC that it has once more revised the voluntary standard for infant bouncer seats, by approving ASTM F2167-22 on May 1, 2022. On June 30, 2022, the Commission published a notice of availability in the *Federal Register* regarding the revised voluntary standard and sought comments on the effect of the revisions on the safety of the standard for infant bouncer seats. 87 FR 39068 (Jun. 30, 2022). No comments were submitted.

As discussed in section **B. Revisions to ASTM F2167**, based on CPSC staff's review of ASTM F2167-22,¹ the Commission will allow the revised voluntary standard to become the mandatory standard because it improves the safety of infant bouncer seats.² Accordingly, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F2167-22 will become the mandatory consumer product safety standard for infant bouncer seats on December 19, 2022. 15 U.S.C. 2056a(b)(4)(B). This direct final rule updates 16 CFR part 1229 to incorporate by reference the revised voluntary standard, ASTM F2167-22.

B. Revisions to ASTM F2167

The ASTM standard for infant bouncer seats includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to children associated with infant bouncer seats. ASTM F2167-22 contains substantive revisions as well as editorial, non-substantive revisions. These revisions from ASTM F2167-19 to ASTM

¹ CPSC staff's briefing package regarding ASTM F2167-22 is available at: <https://www.cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-Infant-Bouncer-Seats.pdf?VersionId=cQ1Dr6X0fNVW4jNlbFGhkwy9bwU1FcZX>.

² The Commission voted 4-1 to approve this notice. Chair Hoehn-Saric and Commissioners Baiocco, Feldman and Boyle voted to approve publication of the notice as drafted. Commissioner Trumka voted to determine that the proposed revision does not improve the safety of infant bouncer seats and therefore not approve publication of the notice in the *Federal Register*. Commissioner Trumka issued a statement in connection with his vote.

F2167-22 consist of changes to the infant bouncer seat warning label language, as well as changes that do not impact safety because they do not change the meaning of the standard and are editorial in nature. The Commission concludes that these changes collectively improve the safety of infant bouncer seats, and none has an adverse effect on safety. Below is a detailed discussion of the substantive and non-substantive changes made to ASTM F2167-19.

Substantive changes in ASTM F2167-22

ASTM F2167-22 revised the suffocation-related warnings to clarify that the product is not intended or safe for sleep and directs consumers to move the baby to a flat sleep surface if the baby falls asleep in the product. Specifically, in section 8.5.2 of ASTM F2167-19, the suffocation hazard warning language stated:

Suffocation hazard: Babies have suffocated when bouncers have tipped over on soft surfaces.

- NEVER use product on a bed, sofa, cushion, or other soft surface.
- NEVER leave baby unattended.

To prevent falls and suffocation:

- ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.

ASTM F2167-22 revised the suffocation hazard warning section to the following:

Suffocation hazard: Babies have suffocated when bouncers tipped over on soft surfaces and/or when bouncers have been used as a sleep product.

- NEVER use on a bed, sofa, cushion, or other soft surface.
- Stay near and watch baby during use. This product is not safe for sleep or unsupervised use. If baby falls asleep, remove baby as soon as possible and place baby on a firm, flat sleep surface such as a crib or bassinet.

To prevent falls and suffocation:

- ALWAYS use restraints and adjust to fit snugly.

The statements advising caregivers to always use restraints and adjust to fit snugly, which is on both the fall hazard and suffocation hazard warnings, have now been updated by removing the statement: “even if baby falls asleep.” Specifically, in sections 8.5.1.1 and 8.5.2.1 of ASTM F2167-19, the contained the statement:

- ALWAYS use restraints and adjust to fit snugly, even if baby falls asleep.

ASTM F2167-22 revised the statement to the following:

- ALWAYS use restraints and adjust to fit snugly.

The warning language in the 2019 version that recommended using and adjusting the restraints includes the phrase: “even if baby falls asleep,” which may suggest to users that using bouncers for infant sleep is acceptable. The ASTM subcommittee has since concluded that bouncers should not be used for sleep. Thus, the 2022 revision deletes this phrase and adds clarifying language to communicate clearly to consumers that: “This product is not safe for sleep or unsupervised use,” while reinforcing the message that babies should sleep in cribs, bassinets, or other firm, flat sleep surfaces. These changes improve safety.

The Commission also considers the change from “NEVER leave child unattended” to “Stay near and watch baby during use” to be an improvement in safety. Consumers are more likely to understand a message directly instructing them on what to do to avoid the hazard. A user study conducted for CPSC to assess this language concluded that caregivers prefer clear and straight-to-the-point phrases. The researchers further concluded that many caregivers misinterpret the words “unattended” and “unsupervised,” and these terms should be replaced with less ambiguous phrases.

The Commission considers the modified suffocation warnings an improvement to safety because they provide clear and concise instructions for safe use of an infant bouncer. The new warning statement provides concise guidance to the caregiver that infant bouncer seats are not safe for sleep, and it provides guidance that is consistent with CPSC messaging about the importance of placing sleeping babies on firm, flat sleep surfaces, such as a crib or bassinet.

Finally, changes were made to the wording in the corresponding Figures indicated below to reflect the current Ad-Hoc Recommendations:³

- Figure.11 Fall Hazard Warnings;
- Figure.12 Suffocation Hazard Warnings; and
- Figure. 13, Instruction Warnings Statements

The Commission considers these changes to be an improvement to safety because the changes are consistent with revisions to language made to *Subsection 8.5.1.1 and 8.5.2.1*, and thus may avoid consumer confusion, and because they discourage caregivers from using the product for sleep.

Non-substantive changes in ASTM F2167-22

ASTM F2167-22 makes several non-substantive changes to the standard. The following has been added to the Appendix:

X1.9 Subsection 8.5.2.1—Change in the form of an added statement to explain the non-relevance and removal of “*even if baby is sleeping*” from the Appendix Rationale in the new standard. This change does not impact safety because it does not affect the information available to consumers.

Finally, several minor editorial changes adding hyphens to language in the standard were made. The Commission finds that the non-substantive changes made in ASTM F2167-22 regarding safety for infant bouncer seats do not impact safety.

C. Incorporation by Reference

Section 1229.2 of the direct final rule incorporates by reference ASTM F2167-22. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule,

³ ASTM Ad Hoc Wording Task Group (Ad Hoc TG) consists of members of various durable nursery product voluntary standards committees, including CPSC staff. The Ad Hoc TG’s purpose is to harmonize the wording of common sections (*e.g.*, introduction, scope, protective components) and warning label requirements across durable infant and toddler product voluntary standards.

ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F2167** of this preamble summarizes the major provisions of ASTM F2167-22 that the Commission incorporates by reference into 16 CFR part 1229. The standard is reasonably available to interested parties. Until the direct final rule takes effect, a read-only copy of ASTM F2167-22 is available for viewing, at no cost, on ASTM's website at: www.astm.org/CPSC.htm. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: www.astm.org/READINGLIBRARY/. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; e-mail: cpsc-os@cpsc.gov. Interested parties can purchase a copy of ASTM F2167-22 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9585; www.astm.org.

D. Certification

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety

standards.” Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because infant bouncer seats are children’s products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1229 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,⁴ the tracking label requirements in section 14(a)(5) of the CPSA,⁵ and the consumer registration form requirements in section 104(d) of the CPSIA.⁶ ASTM F2167-22 makes no changes that would impact any of these existing requirements.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing infant bouncer seats. 82 FR 43470 (Sep. 18, 2017). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing infant bouncer seats to 16 CFR part 1229. The NORs for all mandatory standards for durable infant or toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified in 16 CFR part 1112. *Id.* CPSC-accepted testing laboratories that have ASTM F2167-19 in their scope of accreditation are competent to conduct testing to ASTM F2167-22. None of the changes to the standard would affect a CPSC-accepted laboratory’s ability to conduct testing to the revised standard.

Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F2167-19 to be capable of testing to ASTM F2167-22 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations. Thus,

⁴ 15 U.S.C. 1278a.

⁵ 15 U.S.C. 2063(a)(5).

⁶ 15 U.S.C. 2056a(d).

laboratories will begin testing to the new standard when ASTM F2167-22 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” *Id.* 553(b)(B). The Commission concludes that when it updates a reference to an ASTM standard that the Commission incorporated by reference under section 104(b) of the CPSIA, notice and comment are not necessary.

Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104(b)(1)(B) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM’s revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC’s standard by operation of law. The Commission is allowing ASTM F2167-22 to become CPSC’s new standard because its provisions improve product safety. The purpose of this direct final rule is to update the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F2167-22 takes effect as the new CPSC standard for infant bouncer seats, even if the Commission does not issue this rule. Thus, public comments would not alter substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are unnecessary.

In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are noncontroversial and not expected to generate significant adverse comments. *See* 60 FR 43108 (Aug. 18, 1995). ACUS recommends that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule, because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on December 19, 2022. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be “one where the commenter explains why the rule would be inappropriate,” including an assertion challenging “the rule’s underlying premise or approach,” or a claim that the rule “would be ineffective or unacceptable without a change.” 60 FR 43108, 43111 (Aug. 18, 1995). As noted, this rule merely updates a reference in the CFR to reflect a change that occurs by statute, and public comments should address this specific action.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section **F. Direct Final Rule Process** of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this

rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The current mandatory standard for infant bouncer seats includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). While the revised mandatory standard revises existing marking and labeling, and instructional literature language for infant bouncer seats, the revisions would not add to the burden hours because the products already require marking, labeling, and instructional literature. The new requirements merely require new words or wording changes to language already required by the standard for infant bouncer seats. Therefore, the new requirements are not materially more burdensome than the existing requirements. Conforming the mandatory standard for infant bouncer seats to ASTM’s revision of the voluntary standard also reduces burdens on manufacturers who would follow the updated voluntary standard and thus, in the absence of this rule, be subject to partially inconsistent requirements.

The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1229, and the marking, labeling, and instructional literature for infant bouncer seats are currently approved under OMB Control Number 3041-0159. Because the information collection burden is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

I. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission timely notifies the standards organization that it has determined that the revision

does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). The Commission is taking neither of those actions with respect to the standard for infant bouncer seats. Therefore, ASTM F2167-22 will take effect as the new mandatory standard for infant bouncer seats on December 19, 2022, 180 days after June 22, 2022, when the Commission received notice of the revision.

J. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision “consumer product safety standards.” Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

K. Environmental Considerations

Commission rules are categorically excluded from any requirement to prepare an environmental assessment or an environmental impact statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

L. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission

must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1229

Consumer protection, Imports, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1229 – SAFETY STANDARD FOR INFANT BOUNCER SEATS

1. The authority citation for part 1229 continues to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a).

2. Revise § 1229.2 to read as follows:

§ 1229.2 Requirements for infant bouncer seats.

Each infant bouncer seat must comply with all applicable provisions of ASTM F2167-22, *Standard Consumer Safety Specification for Infant Bouncer Seats*, approved on approved May 1, 2022. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the ASTM website at www.astm.org/READINGLIBRARY/. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; telephone (610) 832-9585; www.astm.org. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, e-mail cpsc-os@cpsc.gov, or at the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, e-mail fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills, Secretary

Consumer Product Safety Commission

[FR Doc. 2022-19179 Filed: 9/2/2022 8:45 am; Publication Date: 9/6/2022]